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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/574,714
Filing Date: March 05, 2007
Appellant(s): EIERMANN ET AL.

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/15/2011 appealing from the Office action mailed 9/20/2011.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 12-22 are pending.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

(8) Evidence Relied Upon

FR2491322A1*	Deiss et al.	04-1982
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FR2491319A1*	Deiss et al.	04-1982
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*Machine translation of document attached.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-15 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by
Deiss et al. (French Patent Publication No. FR2491322).

Deiss et al. teaches a dishwashing machine (10) having a washing container (11). A drying device is connected in an air circulating manner with the washing container such that air is circulated from the washing container to the drying device and from the drying device to the

washing container, Fig. 2. The drying device includes a suction portion (21) for introducing the air from the washing container into the drying device. A blow-out port (29) discharges air from the drying device into the washing container. The conduit (17) between the suction portion and blow-out part constitutes a conveying section. There is a means (fan 27) for effecting movement such that the air that is introduced into the drying device via the suction port is conveyed through the conveying section enroute to subsequent discharge of air through the blow-out port (downstream of the condensing section). The conveying section (23) has a condensing section having *at least one* wall and the *at least one* wall operating as a condensing surface on which the moisture in the circulating air is deposited. The conduit forming the condenser is made of plastic; therefore, the condensing surface is formed of "flexible" material which is a "film" of plastic -- see English machine translation. The condensing surface is thermally insulated with respect to the washing container (tank 11) -- see English machine translation. The drying device has a discharge system (25) to permit drainage of the condensed water, Fig. 2. A heating device (28) is downstream of the conveying section and upstream of the blow-out port. A program control to operate the machine *is inherent* in such a design. The suction port is in the "upper area" of the washing container and the blow-out port is in the "lower area" of the washing container, Fig. 2. The conveying section "is in a sidewall" of the dishwasher (between the outer cabinet and washing tank) -- see English machine translation. Since the condensing surface is not thermally insulated from the outer wall of the dishwasher -- it is in "heat-conducting contact".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deiss et al. (French Patent Publication No. FR2491322), as applied to claim 12, above, in view of Deiss et al. (French Patent Publication No. FR2491319).

Deiss et al. (FR2491322) does not teach a “mixing vane” in the interior of the conveying section; however, Deiss et al. (FR2491319) teaches the use of vanes (28) to provide a tortuous path for the air to increase the contact time in the condensing section to increase the precipitation of the water in the humid air, Fig. 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Deiss et al. (FR2491322) with Deiss et al. (FR2491319) to create a means to increase the efficiency of the condenser to achieve the expected result.

(10) Response to Argument

The Appellant argues that Deiss et al. (French Patent Publication No. FR2491322) does not teach the feature in claim 13, a dependent claim, that "the condensing surface is in heat-conducting *contact* with an outer wall of the dishwasher". The Appellant's sole argument points to Fig. 2 of Deiss et al. to show that the condensing section does not contact, *presumably by direct and physical means*, an outer wall of the dishwasher, pg. 7, 2nd paragraph of Brief. Examiner does not agree with Appellant's position that to be in thermal contact requires direct physical contact. Examiner states that the term "heat-conducting contact" is broad and vague. It does not necessitate a direct physical contact, only that heat is conducted from one element to the other in some way. Even an air gap would conduct heat (absent any thermal insulator); therefore, the rejection is maintained. The Appellant's argument that that such an interpretation is not what one of ordinary skill in the art at the time of the invention is opinion and is not supported. The Appellant's argument against Examiner's position that even an air gap would conduct heat (absent any thermal insulator) is circular and merely restates that the claim requires that condensing surface be in heat conducting contact.

The applicant's argument with regards to claim 16 is an assertion that claim 12 is allowable -- of which no argument is found. The rejections are maintained

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jason P Riggleman/

Examiner, Art Unit 1711

Conferees:

/Michael Barr/

Supervisory Patent Examiner, Art Unit 1711

/Michael Kornakov/

Supervisory Patent Examiner, Art Unit 1714